

DAVID K. TELLEKSON (admitted *pro hac vice*)
dtellekson@fenwick.com
JESSICA M. KAEMPF (admitted *pro hac vice*)
jkaempfb@fenwick.com
FENWICK & WEST LLP
1191 Second Avenue, 10th Floor
Seattle, WA 98101
Telephone: 206.389.4510
Facsimile: 206.389.4511

SHANNON E. TURNER (CSB No. 310121)
sturner@fenwick.com
GREGORY P. ADAMS (CSB No. 292391)
gadams@fenwick.com
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
Telephone: 415.875.2300
Facsimile: 415.281.1350

Attorneys for Defendant
Birdies, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROTHY'S, INC., a Delaware corporation,

Plaintiff,

v.

BIRDIES, INC., a Delaware corporation,

Defendant.

Case No.: 3:21-cv-02438-VC

**BIRDIES, INC.'S REVISED
RESPONSE TO ADMINISTRATIVE
MOTION TO FILE MATERIALS
UNDER SEAL
[DKT. 139]**

In connection with its Rule 56(d) motion, Rothy's filed a motion for administrative relief to consider whether certain materials listed in that Rule 56(d) motion should be sealed (Dkt. 139). Birdies hereby files a revised response to Rothy's administrative motion, as directed by the Court in Dkt. 174.

Birdies seeks to file under seal only the limited portions of Exhibits B, I, and J identified in the following chart. Each of these exhibits is equivalent to an exhibit addressed in Birdies' other responses to Rothy's administrative motions to consider whether material should be sealed. Specifically, the reasons for sealing the exhibits are found in Birdies' filing at Dkt. 177, filed this same date, and Birdies' filing at Dkt. 149. Additionally, Magistrate Judge Tse ruled at Dkt. 168 that the URLs in Exhibit I may be kept under seal. Accordingly, the following exhibit excerpts should be maintained under seal.

Document	Equivalent Document from Birdies' Filings	Portion to Be Sealed
Excerpts of February 15, 2022 deposition transcript of Marisa Sharkey (Exhibit B to the Pfingst Declaration)	Dkt. 177 (Exhibit 9)	Unseal except for the following testimony: • 273:1–25
BIRDIES_00077248 (Exhibit I to the Pfingst Declaration)	Dkt. 149 (Exhibit D)	Unseal except for the file location URLs at: • BIRDIES_00077250–51
BIRDIES_00067835 (Exhibit J to the Pfingst Declaration)	Dkt. 177 (Exhibit 26)	Unseal except for email addresses.

The Court should seal these materials for all the reasons explained in Birdies' filings at Dkt Nos. 149 and 177, and in accordance with the Order at Dkt. 168.

Dated: March 31, 2022

FENWICK & WEST LLP

By: /s/ Gregory P. Adams
Gregory P. Adams

Counsel for Defendant Birdies Inc.